

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7  
8 RUBEN M. TRUJILLO, RICHARD  
9 GONZALEZ, SERGIO MEZA-MEDINA,  
10 DANIEL MIMS, and RENE RODRIGUEZ,

11 Defendants.

12  
13 No. CR-13-2109-FVS-1  
CR-13-2109-FVS-2  
CR-13-2109-FVS-3  
CR-13-2109-FVS-5  
CR-13-2109-FVS-6

14 ORDER DENYING "MOTION TO  
DISMISS FOR VIOLATION OF  
DUE PROCESS AND EQUAL  
PROTECTION"

15  
16 RUBEN M. TRUJILLO moves to dismiss the Superseding Indictment on  
the ground the Attorney General is arbitrarily refusing, in violation  
of the Fifth Amendment, to remove marijuana from the list of Schedule  
I drugs.

17 **BACKGROUND**

18 Marijuana has been, and continues to be, classified as a Schedule  
19 I drug. 21 U.S.C. § 812(c), Schedule I(c)(10). The existing  
20 classification of marijuana is not immutable. Congress has conferred  
21 upon the Attorney General the authority to reclassify marijuana. 21  
22 U.S.C. § 811. To date, however, he has declined to do so. Ruben  
23 Trujillo alleges the existing classification of marijuana is  
24 arbitrary. He alleges the Attorney General lacks a rational basis for  
25 retaining marijuana on the list of Schedule I drugs. Believing, as he  
26 does, that the Attorney General is behaving in an arbitrary manner, he

1 moves to dismiss the indictment. In essence, he argues the Fifth  
2 Amendment forbids the United States from prosecuting a person under  
3 the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, unless the  
4 United States can demonstrate the drug in question has been placed on  
5 the proper schedule.

6 **RULING**

7 "Federal courts are courts of limited jurisdiction," possessing  
8 'only that power authorized by Constitution and statute.'" *Gunn v.*  
9 *Minton*, 568 U.S. ----, ----, 133 S.Ct. 1059, 1064, 185 L.Ed.2d 72  
10 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511  
11 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994)). This Court  
12 may adjudicate only those legal disputes Congress has authorized it to  
13 adjudicate. See *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013,  
14 1019 (9th Cir.2012) (en banc). Mr. Trujillo urges the Court to review  
15 the Attorney General's refusal to reschedule marijuana. Before  
16 accepting his request, the Court must decide whether Congress has  
17 authorized it to review decisions of the type challenged by Mr.  
18 Trujillo. Cf. *Grupo Dataflux v. Atlas Global Grp.*, L.P., 541 U.S.  
19 567, 593, 124 S.Ct. 1920, 158 L.Ed.2d 866 (2004) ("by whatever route a  
20 case arrives in federal court, it is the obligation of both district  
21 court and counsel to be alert to jurisdictional requirements").

22 Congress has decided to allow review of "[a]ll final  
23 determinations, findings, and conclusions of the Attorney General  
24 under [subchapter I of the Controlled Substances Act]." 21 U.S.C. §  
25 877. As the Supreme Court observed in *Toubey v. United States*, 500  
26 U.S. 160, 168, 111 S.Ct. 1752, 114 L.Ed.2d 219 (1991), § 877 "plainly

1 authorizes judicial review of a permanent scheduling order." However,  
2 § 877 also provides that a person who is challenging a final decision  
3 of the Attorney General must bring the challenge "in the United States  
4 Court of Appeals for the District of Columbia or for the circuit in  
5 which [the person's] principal place of business is located . . . ."  
6 *Id.* If Mr. Trujillo's challenge is governed by § 877, then this Court  
7 lacks authority to adjudicate it. He must bring the challenge in  
8 another court.

9 The Ninth Circuit discussed § 877 in *United States v. Forrester*,  
10 616 F.3d 929 (9th Cir.2010). There, the defendant challenged a  
11 permanent scheduling order that listed the drug "ecstasy" as a  
12 Schedule I drug. 616 F.3d at 935. The Ninth Circuit distinguished  
13 temporary scheduling orders and permanent scheduling orders. 616 F.3d  
14 at 636. The latter are governed by § 877. 616 F.3d at 636-37. That  
15 being the case, said the circuit court, "substantive collateral  
16 attacks on permanent scheduling orders are impermissible in criminal  
17 cases . . ." *Id.* at 937. The *Forrester* court gave several reasons  
18 for its ruling. To begin with, scheduling decisions are complex. 616  
19 F.3d at 936 (citing *United States v. Carlson*, 87 F.3d 440, 446 (11th  
20 Cir.1996)). In addition, the agency that made the decision is not a  
21 party to the action. *Id.* (citing *Carlson*, 87 F.3d at 446). Finally,  
22 "to allow all criminal defendants to collaterally attack a permanent  
23 scheduling order based on their view that a particular drug has been  
24 mis-scheduled would potentially place a continuing, onerous burden on  
25 district courts to constantly re-litigate the same issue." *Id.*

26 The considerations cited by the Ninth Circuit in *Forrester* apply

with equal force to the type of challenge Mr. Trujillo would like to bring in this action. There is no reason to treat his type of challenge differently than an attack upon a permanent scheduling order. As a result, the Court concludes the type of challenge Mr. Trujillo is attempting to bring is subject to the limitations imposed by § 877. He may not use this case as a vehicle for challenging the Attorney General's refusal to remove marijuana from the list of Schedule I drugs. The Court lacks authority to adjudicate his challenge.

**IT IS HEREBY ORDERED:**

Ruben Trujillo's "Motion to Dismiss for Violation of Due Process and Equal Protection" (**ECF No. 282**) is **denied**.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to enter this order and furnish copies to counsel.

**DATED** this 25th day of July, 2014.

s/ Fred Van Sickle  
Fred Van Sickle  
Senior United States District Judge